

ANTHONY L. SUMMERS	§	
VS.	§	CIVIL ACTION NO. 1:08-CV-220
NATHANIEL QUARTERMAN, ET AL.	§	

Plaintiff Anthony L. Summers, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff sought leave to proceed *in forma pauperis*. Following an evidentiary hearing, the magistrate judge recommended denying plaintiff's motion to proceed *in forma pauperis*, and dismissing the action pursuant to 28 U.S.C. § 1915(g), unless plaintiff paid the filing fee within ten days. Plaintiff did not pay the filing fee. On August 3, 2008, the complaint was dismissed without prejudice. Plaintiff filed a notice of appeal, but the appeal was dismissed due to plaintiff's failure to pay the docketing fee.

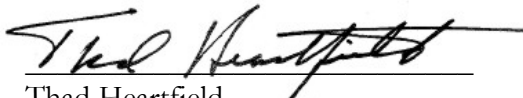
Federal Rule of Civil Procedure 60 allows the court to grant a party relief from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct of an adverse party; (4) the

judgment is void; (5) the judgment has been satisfied or it is no longer equitable for the judgment to have prospective application; or (6) any other reason justifying relief. FED. R. CIV. P. 60(b).

Plaintiff has not alleged any grounds warranting relief from the judgment. Plaintiff may not proceed *in forma pauperis* because he did not demonstrate that he was in imminent danger of serious physical injury at the time he filed the lawsuit. Although plaintiff alleged that he had not received treatment for a self-diagnosed medical condition, he admits that he has consistently refused diagnostic testing that would allow the physicians to diagnose and treat him. It is accordingly

ORDERED that plaintiff's motion for relief from judgment (document no. 55) is **DENIED**.

SIGNED this the 25 day of **November, 2008**.


Thad Heartfield
United States District Judge